



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nu Stream Realty Inc. Representing: Chen,
Yu and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Package”) by registered mail on May 29, 2021 in accordance with Section 89 of the Act. The Tenants provided the tracking number and receipt for this registered mail. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Package on June 3, 2021. The Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement stated on June 15, 2017. Rent of \$2,800.00 is payable on the first day of each month. At the outset of the tenancy the Landlord

collected \$1,400.00 as a security deposit and \$600.00 as a pet deposit. On April 28, 2021 the Tenants found a two-month notice to end tenancy for landlord's use on the unit door. The reason stated on the Notice is that the Landlord or Landlord's spouse will occupy the unit.

The Tenants state that the Landlord has issued the Notice in bad faith as prior to the service of the Notice the Landlord had listed the rental unit for sale on February 8, 2021 with showings to March 25, 2021. The Landlord had also offered the Tenants compensation to end the tenancy under mutual agreement prior to listing the unit. The Landlord told the Tenants that they wanted to sell the unit vacant as there would be a greater market demand and more money for the sale. On April 28, 2021, the date the Tenants found the Notice, the Landlord had told the Tenants that the Landlord was going to sell their current residence and move into the rental unit. The Landlord has not listed their residence for sale to date.

Analysis

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Based on the Tenants' undisputed evidence of the listing for sale of the unit prior to the service of the Notice I find that the Tenants have substantiated that the Landlord issued the Notice in bad faith. The Tenants are therefore entitled to a cancellation of the Notice. The tenancy continues.

As the Tenants have been successful with their claim, I find that the Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 21, 2021

Residential Tenancy Branch